applies only to suits pending at the time the federal action is brought. U. S. COMP. STAT., 1901, § 720; *Dietzsch* v. *Huidekoper*, 103 U. S. 494. If jurisdiction first attaches in the federal court it will enjoin subsequent proceedings in a state court which would defeat the jurisdiction. *Ex parte Young*, 209 U. S. 123, 28 Sup. Ct. 441; *Starr* v. *Chicago, R. I. & P. Ry. Co.*, 110 Fed. 3; aff'd in *Prout* v. *Starr*, 188 U. S. 537, 23 Sup. Ct. 398. It seems clear, however, that issues not directly decided by the federal court can subsequently be passed upon by the state court. *Buck* v. *Colbath*, 3 Wall. (U. S.) 334; *Harkrader* v. *Wadley*, 172 U. S. 148, 19 Sup. Ct. 119. Whether or not the second suit is an infringement on the federal jurisdiction seems to depend on whether the federal judgment could be pleaded as *res judicata*. See *Harkrader* v. *Wadley*, *supra*, 168. This plea will only bar suits on questions necessarily decided in the first case. *Sargent* v. *New Haven Steamboat Co.*, 65 Conn. 116, 31 Atl. 543. If the suit is begun in the state court before the federal suit is terminated, the state suit can be temporarily enjoined if it appears that it may interfere with the ultimate decree of the federal court on the above principle. *Wagner* v. *Drake*, 31 Fed. 849; *French* v. *Hay*, 22 Wall. (U. S.) 250. As the reasonableness of the rates was hardly one of the issues to be decided in the principal case, the court correctly refused to enjoin the suit to reduce them.

INSURANCE — RIGHTS OF BENEFICIARY — CHANGE OF BENEFICIARIES: WHEN CHANGE IS CONSIDERED COMPLETE. — The insured took out a life insurance policy with the defendant, naming his wife as beneficiary. By its terms he had the right to change the beneficiary by filing with the defendants written notice, the change to take effect upon the indorsement of the same on the policy by the company. The insured sent notice that the plaintiff was to be made the beneficiary but died before it reached the defendants. *Held*, that the plaintiff may recover. *Mutual Life Ins. Co.* v. *Lowther*, 126 Pac. 882 (Colo.).

Equity's jurisdiction to afford relief from accident being limited, it will not aid mere intention without substantial performance. *Holland* v. *Taylor*, 111 Ind. 121, 12 N. E. 116; *Ireland* v. *Ireland*, 42 Hun (N. Y.) 212. But in many cases it has been held that where there is no express condition precedent and the insured has substantially complied with the requirements for changing the beneficiary, but is prevented from completing them by death, equity will treat the change as completed. *Berkeley* v. *Harper*, 3 App. Cas. (D. C.) 308; *Luhrs* v. *Luhrs*, 123 N. Y. 367, 25 N. E. 388. These are principally cases where the real controversy is between two beneficiaries. *Titsworth* v. *Titsworth*, 40 Kan. 571; *National American Association* v. *Kirgin*, 28 Mo. App. 80. In analogous cases of defective execution of powers, equity exercises a similar jurisdiction, relieving against the accident of death. *Sayer* v. *Sayer*, 7 Hare 377. Equity, indeed, will not ordinarily perfect an incomplete gift. But in analogous cases of mistake where property is in dispute between two donees, equity will interfere to give it to the one intended by the donor. *Huss* v. *Morris*, 63 Pa. St. 367. In the principal case, however, the provision as to the time of taking effect seems a clear condition precedent. *Sheppard* v. *Crowley*, 61 Fla. 735, 55 So. 841; *Sangunitto* v. *Goldey*, 88 N. Y. App. Div. 78, 84 N. Y. Supp. 989. *Contra*, *Heydorf* v. *Conrack*, 7 Kan. App. 202, 52 Pac. 700. Acts by the insured can hardly amount to substantial performance when the defendant has made an absolute condition for the very purpose of protecting itself against a possibile double liability. *Sheppard* v. *Crowley*, *supra*. Especially is this true where the insurance company, as here, is actually setting up the defense for its own benefit.

JURY — WAIVER OF TRIAL BY JURY: CONSENT TO TRIAL BY FIVE JURORS. — In a trial for assault before a Court of Special Sessions the defendant, after demanding a jury, consented to a panel of five. The lower court, without ref-